77-5324
24

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-5324

CIVIL ACTION

GONZALEZ, JULIA, Individually and as Guardian Ad Litem For LUIS GONZALEZ, Age 9, and MANUEL GONZALEZ, Age 10, and Further on Behalf of all Persons Similarly Situated,

Petitioners,

v.

YOUNG, JAMES F., Director, Hudson County Welfare Board and G. THOMAS RITTI, Director, New Jersey Division of Public Welfare,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

HUDSON COUNTY LEGAL SERVICES CORP.
TIMOTHY K. MADDEN, DIRECTOR
Theodore A. Gardner, Esq.
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77-5324

INDEX

	Page
Table of Citations	ii
Citations With Respect to the Instant Case	1.
Jurisdiction of the U.S. Supreme Court With Respect to the Petition	1.
Questions for Review	1.
Statutes and Regulations Involved	1.
Basis of Federal Court Jurisdiction	4.
Statement of the Case	4.
Argument	5.
Conclusion	7.
Index to Appendix	a.

TABLE OF CITATIONS

Page

Federal Statutes Cited

42 U.S.C.A. 1983 . . . . . 1.

28 U.S.C.A. 1343(3) . . . . . 1.

28 U.S.C.A. 1343(4) . . . . . 1.

28 U.S.C.A. 2101(c) . . . . . 1.

U.S.C.A. Const. Art. VI cl. 2 . . . . . 1.

42 U.S.C.A. 606(e)(1) . . . . . 3.

State Regulations Cited

N.J.A.C. 10:82-5.12(c)(1) . . . . . 4.

Rule Cited

Rule 19(b) Title 28-Supreme Court Rules . . . . . 5.

Cases Cited

Blue v. Craig 505 F_2 830 (4 Cir-1974) . . . . . 6.

Gomez v. Florida State Employment Service 417 F_2 569 (5 Cir - 1969) . . . . . 6.

Hagans v. Lavine 415 U.S. 528, 94 S. Ct. 1372(1974) . . . . . 6.

Lynch v. Household Finance Corp. 405 U.S. 538, 92 S. Ct. 1113(1972) . . . . . 6.

Vasquez v. Ferre 404 F. Supp. 815(D.N.J.-1975) . . . . . 6.

Watters v. Parrish 402 F. Supp. 696(W.D. Va.-1975) . . . . . .6.

THE INSTANT CASE

Gonzalez v. Young 418 F. Supp. 566(D.C. N.J. - 1976)

Gonzalez v. Young ____F2____ (3 Cir - July 15. 1977)

JURISDICTION OF THE U.S. SUPREME COURT WITH RESPECT TO THIS PETITION

The final judgment of the Third Circuit is dated July 15, 1977. Jurisdiction is conferred by 28 U.S.C.A. 2101(c)

QUESTIONS FOR REVIEW

a. Is 42 U.S.C.A. 1983 an Act of Congress providing for equal rights of citizens as required by 28 U.S.C.A. 1343(3)

b. Is 42 U.S.C.A. 1983 an Act of Congress providing for the protection of civil right as required by 28 U.S.C.A. 1343 (4)

c. Does the Supremacy Clause satisfy the "secured by the Constitution" requirement of 28 U.S.C.A. 1343(3)

STATUTES AND REGULATIONS INVOLVED

U.S.C.A. Const. Art. VI cl. 2 1968ed. page 715.

This Constitution, and the Law of the United Stated which shall be made in pursuance thereof and all Treaties made, or which shall be made, under the Authority of the United States

shall be the supreme law of the lands; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding

28 U.S.C.A. 1343(3) & (4) 1976 ed. page 310

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote

42 U.S.C.A. 1983, 1974 ed. page 250

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress

42 U.S.C.A. 606 (e)(1), 1974 ed. page 126

The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12 month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payment, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements, in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment -

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary but only with respect to a State whose State plan approved under sect[illegible] of this title includes provision for such assistance

New Jersey Administrative Code N.J.A.C. 10:82-5.12(c)(1), Volume 10 page 228

Emergency Shelter: When an actual state of homelessness exists or is manifestly imminent, the county welfare board shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available for a specified temporary period not to exceed the calendar month following the month in which the state of homelessness first becomes known

BASIS OF FEDERAL COURT JURISDICTION

Jurisdiction is in issue. Petitioner asserts jurisdiction under 28 U.S.C.A. 1343 (3) & (4). See also 42 U.S.C.A. 1983

STATEMENT OF THE CASE

On February 2, 1976 petitioner was set upon by a robber who stole all of her welfare funds. Petitioner and her two infants were rendered destitute. They applied to their local welfare office for "emergency assistance" which was denied on the

grounds that petitioner was not homeless. See N.J.A.C. 10:82-5.12(c)(1). Petitioner then filed an action in federal district court alleging that the "homelessness" prerequisite in New Jersey law impermissibly narrowed the term "destitution" as the same is contained in the federal genesis of emergency assistance. [redacted] 606(e)(1). Petitioner's complaint was dismissed by the 3rd Circuit on July 15, 1977 for want of jurisdiction. The 3rd Circuit held:

a. the Supremacy Clause cannot confer jurisdiction under 28 U.S.C.A. 1343(3)

b. 42 U.S.C.A. 1983 is not an Act of Congress providing for equal rights of citizens as required by 28 U.S.C.A. 1343(3)

c. 42 U.S.C.A. 1983 is not an Act of Congress providing for the protection of civil rights as required by 28 U.S.C.A.1343(4)

ARGUMENT

This petitions satisfies the "circuit conflict" and "unsettled important questions" clauses of Rule 19(b), Title 28 Supreme Court Rules. The Third Circuit so noted in the lead sentence of the Gonzalez opinion:

> "This appeal requires us to resolve a question which was left open by the Supreme Court in Hagans v. Lavine 415 U.S. 528(1974) and which has divided the circuits. We are to decide whether the district court had jurisdiction in a claim for damages totalling less than $10,000 and alleging that a state regulation conflicts with a federal statute and therefore must fall because of the Supremacy Clause." Gonzalez v. Young ___F2___(3 Cir, July 15, 1977).

The Third Circuit went on to find an absence of jurisdiction for the reasons noted heretofore. We take issue with this ruling. For the reasons set forth at length in Blue v. Craig 505 F_2 830 (4 Cir - 1974), we respectfully submit that jurisdiction is appropriate in the instant case both because the Supremacy Clause is within the ambit of 28 U.S.C.A. 1343(3) and because 42 U.S.C.A. 1983 is within the intendment of 28 U.S.C.A. 1343(3) & (4). Accord: Gomez v. Florida State Employment Service 417 F_2 569 (5 Cir-1969), Vasquez v. Ferre 404 F. Supp. 815(D.N.J. 1975). Watters v. Parrish 402 F. Supp. 696(W.D.Va.-1975). CF. Lynch v. Household Finance Corp. 405 U.S. 538, 92 S. Ct. 1113(1972), Hagans v. Lavine 415 U.S. 528, 94 S. Ct. 1372 (1974).

CONCLUSION

It is respectfully submitted that a writ of certiorari should issue.

Respectfully submitted,

HUDSON COUNTY LEGAL SERVICES
Timothy K. Madden, Director

By: /s/ Theodore A. Gardner
Theodore A. Gardner, Esq.

Supreme Court, U. S.
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YOUNG, JAMES F., Director, Hudson County Welfare Board and G. THOMAS RITTI, Director, New Jersey Division of Public Welfare,

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APPENDIX

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INDEX TO APPENDIX

Gonzalez v. Young 418 F. Supp. 566 (D.C. N.J.-1976)

United States District Court
District of New Jersey,
Civil Action No. 76-455

Julia Gonzalez, etc.,
Plaintiff,
v.

James F. Young, etc., et al.,
Defendants.

Judge Meanor's Opinion, Dated August 13, 1976 . . . . . .

The Opinion has not been reproduced here
but can be found in the Appendix Volume at Page 21.

Gonzalez v. Young 560 F2 160 (3 Cir - July 15, 1977)

United States Court of Appeals
For The Third Circuit
Civil No. 76-2410

Gonzalez, Julia, etc.,
Appellant,
v.

Young, James F., etc., et al.,
Appellee.

Judge Aldisert's Opinion, Filed July 15, 1977 . . . . . .

The Opinion has not been reproduced here but can be found
in the Appendix Volume at Page 35.